

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
QUEEN CITY SHEET METAL
AND ROOFING, INC.,

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 534

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$50.00 civil penalty for allegedly causing or permitting the emission of excessive odors from tarring operations in violation of Respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 1st day of July, 1974, at Seattle, Washington; and appellant, Queen City Sheet Metal and Roofing, Inc., appearing through John H. Ober and respondent, Puget Sound Air Pollution Control Agency, appearing through Keith D. McGoffin; and Board members present at the hearing being Walt Woodward, (presiding Officer) and Chris Smith; and the Board having

1 considered the sworn testimony, exhibits, records and files herein and
2 having entered on the 11th day of July, 1974, its proposed Findings of
3 Fact, Conclusions of Law and Order, and the Board having served said
4 proposed Findings, Conclusions and Order upon all parties herein by
5 certified mail, return receipt requested and twenty days having elapsed
6 from said service; and

7 The Board having received exceptions to said proposed Findings,
8 Conclusions and Order from appellant and having considered and denied
9 same; and the Board being fully advised in the premises; now therefore,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
11 Findings of Fact, Conclusions of Law and Order, dated the 11th day of
12 July, 1974, and incorporated by this reference herein and attached
13 hereto as Exhibit A, are adopted and hereby entered as the Board's
14 Final Findings of Fact, Conclusions of Law and Order herein.

15 DONE at Lacey, Washington, this 6th day of August, 1974.

16 POLLUTION CONTROL HEARINGS BOARD

17 Walt Woodward
18 WALT WOODWARD, Chairman

19 Chris Smith
20 CHRIS SMITH, Member

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This matter, the appeal of a \$50.00 civil penalty for allegedly causing or permitting the emission of excessive odors from tarring operations in violation of Respondent's Regulation I, came before the Pollution Control Hearings Board, Walt Woodward (presiding officer) and Chris Smith, at a formal hearing in Seattle, Washington at 9:30 a.m., July 1, 1974.

Appellant appeared through John H. Ober; Respondent appeared through Keith D. McGoffin. Sherri Darkow, Olympia court reporter,

1 recorded the proceedings.

2 Having heard the testimony, examined the exhibits and being fully
3 advised, the Board makes the following

4 FINDINGS OF FACT

5 I.

6 Appellant engages in tarring operations which include the tasks of
7 constructing built-up roofing and wall insulation using tar as an
8 ingredient. Appellant is located at 1711 Occidental South in Seattle.
9 The alleged violation occurred in an alley behind 111 - 1st Avenue South
10 in Seattle (King County) near the Maynard Hotel.

11 II.

12 Appellant was engaged in tarring operations upon the Maynard Hotel
13 on 1st Avenue in Seattle on December 18-22, 1973 and on February 1,
14 1974. While its employees were working on the hotel, the tar kettle
15 from which hot tar was supplied was left in the alleyway and attended
16 by an operator.

17 III.

18 On December 18, 1973 in response to a complaint about tar odor,
19 David H. Walls and James D. Parsons, air pollution inspectors for the
20 Puget Sound Air Pollution Control Agency (PSAPCA), visited the alley
21 where the tar kettle was operating. They found one operator in attenda
22 and a tar kettle with its lid open in which tar was boiling and smoking
23 Mr. Parsons issued a Notice of Violation to Mr. Kelley, the kettle
24 operator. No Notice of Civil Penalty was issued for this violation.

25 IV.

26 On February 1, 1974 at 10:30 a.m. in response to another complaint

David H. Walls and Walter D. DeHaan, air pollution inspectors for PSAPCA, visited the same alley on 111 - 1st Avenue South. They went to the Glasswater Leather Works, the complainant, and noticed a very strong tar smell throughout the complainant's retail and manufacturing areas. Thereafter, these two inspectors located the source of the tar odor. The lid of the tar kettle was propped open, through which boiling tar could be seen and from which bluish-white smoke and fumes were escaping. The Appellant's tar kettle operator, Danny L. Ditton, was in charge of the kettle and accepted the Notice of Violation No. 9000 issued by Mr. Walls for the odor.

V.

From the Notice of Violation No. 9000 was assessed a Notice of Civil Penalty No. 1410 for an amount of \$50.00 pursuant to Respondent's Regulation I, which is the subject matter of this appeal.

VI.

Respondent's witnesses, Jerry Raine, Mark Stein, and Buddy Hanna, testified as to the "severe" and "obnoxious" odor from the tar kettle that permeated their shop during the periods of Appellant's operation. Two employees became sick and left work because of the strong smell. Customers in the shop also noticed the strong odor. Inspector Walls rated the odor in this area as 4 on a scale of 5. Inspector DeHaan rated the odor in the same area as 3 on a scale of 5. A rating of 5 on the odor scale would mean that the smell was very, very strong. This test was a subjective test requiring the concurrence in opinion of two inspectors before a violation was deemed to have occurred. None of Appellant's employees became ill from this odor.

VII.

Appellant could have avoided the odor if a tanker, rather than a tar kettle, was used in the operation. However, the use of the tanker in this area was prohibited by the Fire Department because it used propane as a fuel. The tar kettle, which was fueled with kerosene, was ultimately used. The operation of this kettle required an operator who was required to keep the tar temperature between 425-500 degrees. When the tar became too hot more smoke and fumes were emitted. Also, the tar was likely to "flash" and catch on fire. In order to lower the tar temperature in this event, the fuel supply was turned off and the kettle lid opened. Maintaining a proper temperature between 425-500 degrees would have avoided excessive smoke and odor.

VIII.

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Pollution Control Hearings Board makes these

CONCLUSIONS OF LAW

I.

The Board has jurisdiction over the persons and subject matter of this appeal.

II.

Appellant's Motion to Dismiss on the grounds that the Notice of Civil Penalty pursuant to Section 3.29 of Respondent's Regulation I lacked particularity in describing the violation is denied. The Notice of Violation which Appellant received reasonably describes the

violation and is incorporated in the Notice of Civil Penalty.

III.

The preponderance of the evidence shows that a severe and objectionable odor was caused or permitted by Appellant on February 1, 1974. This odor was in the nature of an air contaminant that causes "detriment to the health, safety or welfare" to any person, or "causes damages to property or business". Section 9.11 of Respondent's Regulation I.

IV.

Appellant violated Section 9.11 of Respondent's Regulation I.

V.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The appeal is denied and the \$50.00 civil penalty assessed against Appellant is affirmed.

DONE at Lacey, Washington this 11th day of July, 1974.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

Chris Smith
CHRIS SMITH, Member